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7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**
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10 TROY J. DUGAN,

11 Plaintiff,

12 v.

13 COUNTY OF LOS ANGELES, et al.,

14 Defendants.
15

Case No. 2:11-cv-08145-ODW (SHx)

**ORDER RE MOTION TO
DISMISS [26]**

16 Pending before the Court is Defendants' Motion to Dismiss Plaintiff's First
17 Amended Complaint ("FAC"). (Dkt. No. 26.) Having considered the papers filed in
18 support of and in opposition to the instant Motion, the Court deems the matter
19 appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

20 **I. BACKGROUND**

21 On the evening of October 3, 2009, Plaintiff went to the residence of his
22 neighbor, Esther Robbins, to help her resolve a dispute she was having with her
23 landlord. (FAC ¶¶ 8-9.) Robbins had informed Plaintiff that Robbins's landlord was
24 physically evicting her—throwing her belongings onto the front lawn—without proper
25 authority and asked Plaintiff for help. (*Id.* ¶ 9.) When Plaintiff arrived at Robbins's
26 home, he joined in the argument between Robbins and her landlord. (*Id.* ¶ 10.)
27 Eventually, Plaintiff told the landlord the argument was getting out of control and he
28 was going to call the police to resolve the issue. (*Id.*) After Plaintiff called the police,

1 the landlord went to her truck in front of Robbins's home to wait for the police and
2 Plaintiff and Robbins went back into the residence. (*Id.*)

3 When the deputies¹ arrived at Robbins's home, Plaintiff was sitting on a chair
4 in one of the bedrooms of the residence. (*Id.* ¶ 11.) The deputies first spoke with the
5 landlord out in front of the residence and then approached Robbins, who apparently
6 returned outside, and asked if anyone was inside the house. (*Id.*) Robbins responded
7 that Plaintiff was inside. (*Id.*)

8 The deputies entered the residence with their guns drawn and moved into the
9 bedroom where Plaintiff was. (*Id.*) Two of the deputies² entered the bedroom and
10 ordered Plaintiff to stand up. (*Id.*) Plaintiff did not immediately arise and asked the
11 deputies why he should stand. (*Id.*) The two deputies approached Plaintiff, one
12 standing on either side of him, and again ordered Plaintiff to stand. (*Id.*) Then one of
13 the deputies reached for Plaintiff, who was starting to stand up. (*Id.*) Plaintiff told the
14 deputies that he would stand on his own. (*Id.*) The other deputy took out a can of
15 pepper spray and attempted to spray Plaintiff with it. (*Id.* ¶¶ 11–12.) The deputy
16 partially sprayed Plaintiff but also sprayed the other deputy. (*Id.* ¶ 12.) The deputy
17 with the can of pepper spray then hit Plaintiff in the head with the can, causing a
18 laceration on the side of Plaintiff's forehead. (*Id.*) The two deputies then pushed
19 Plaintiff up against the wall, handcuffed him, and dragged him out of the bedroom on
20 his stomach. (*Id.*)

21 After being taken to a hospital where he was treated for his injuries, Plaintiff
22 was booked into jail with charges for resisting arrest and making criminal threats. (*Id.*
23 ¶ 14.) Plaintiff remained in jail until October 6, 2009, four days later. (*Id.* ¶ 15.)

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26 ¹ The Court refers to Lieutenant Roberts, Sergeant Gonzales, Sergeant Stanley, Deputy Nance,
Deputy Binder, Deputy Roth, and Deputy Abdulfatah collectively as "deputies."

27 ² Plaintiff does not specify which two of the deputies entered the bedroom and ultimately arrested
28 Plaintiff.

1 Eventually, Plaintiff was charged in court with resisting, obstructing, or
 2 delaying a peace officer in the performance of his duties, based upon the deputies'
 3 reports of the October 3, 2009 incident. (*Id.* ¶ 14.) This charge was ultimately
 4 dismissed. (*Id.* ¶ 15.)

5 On September 30, 2011, Plaintiff filed a complaint against Defendants. (Dkt.
 6 No. 1.) Plaintiff subsequently filed a FAC on December 12, 2011. (Dkt. No. 9.)
 7 Therein, Plaintiff alleges that Defendants are liable under 42 U.S.C. § 1983 for
 8 violating his constitutional rights by arresting him without a warrant or probable
 9 cause, using excessive force during the arrest, and maliciously prosecuting him. (FAC
 10 ¶¶ 17–19.) Plaintiff also alleges that the County of Los Angeles is liable under § 1983
 11 because the County's unlawful policies, customs, and habits of inadequately hiring,
 12 training, disciplining, and supervising its deputies proximately caused Plaintiff's
 13 injuries. (*Id.* ¶¶ 24–26.)

14 Defendants move to dismiss Plaintiff's FAC entirely under Federal Rule of
 15 Civil Procedure 12(b)(6). (Dkt. No. 26.)

16 **II. LEGAL STANDARD**

17 To survive a motion to dismiss for failure to state a claim under Rule 12(b)(6), a
 18 complaint generally must satisfy only the minimal pleading requirements of Rule
 19 8(a)(2). *Porter v. Jones*, 319 F.3d 483, 494 (9th Cir. 2003). Rule 8(a)(2) requires “a
 20 short and plain statement of the claim showing that the pleader is entitled to relief.”
 21 Fed. R. Civ. P. 8(a)(2). For a complaint to sufficiently state a claim, its “[f]actual
 22 allegations must be enough to raise a right to relief above the speculative level.” *Bell*
 23 *Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Dismissal under a 12(b)(6) motion
 24 can be based on “the absence of sufficient facts alleged under a cognizable legal
 25 theory.” *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). To
 26 overcome a 12(b)(6) motion, a complaint must contain sufficient factual matter that—
 27 if accepted as true—states a claim to relief that is plausible on its face. *Ashcroft v.*
 28 *Iqbal*, 556 U.S. 662, 678 (2009).

1 The plausibility standard “asks for more than a sheer possibility that a
2 defendant has acted unlawfully. Where a complaint pleads facts that are merely
3 consistent with a defendant’s liability, it stops short of the line between possibility and
4 plausibility of entitlement of relief.” *Id.*

5 When considering a 12(b)(6) motion, a court is generally limited to considering
6 material within the pleadings and must construe “[a]ll factual allegations set forth in
7 the complaint . . . as true and . . . in the light most favorable to [the plaintiff].” *See*
8 *Lee v. City of L.A.*, 250 F.3d 668, 688 (9th Cir. 2001). A court is not, however,
9 “required to accept as true allegations that are merely conclusory, unwarranted
10 deductions of fact, or unreasonable inferences.” *Sprewell v. Golden State Warriors*,
11 266 F.3d 979, 988 (9th Cir. 2001).

12 As a general rule, leave to amend a complaint that has been dismissed should be
13 freely granted. Fed. R. Civ. P. 15(a). However, leave to amend may be denied when
14 “the court determines that the allegation of other facts consistent with the challenged
15 pleading could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well*
16 *Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986); *see Lopez v. Smith*, 203 F.3d
17 1122, 1127 (9th Cir. 2000).

18 III. DISCUSSION

19 Defendants move to dismiss both of Plaintiff’s claims for § 1983 liability and to
20 strike Plaintiff’s request for punitive damages. The Court considers each in turn.

21 A. First claim: excessive force, unlawful seizure, and malicious prosecution

22 Plaintiff’s first claim alleges Defendants are liable under 42 U.S.C. § 1983
23 because they unlawfully arrested him, used excessive force in doing so, and
24 maliciously prosecuted him. (FAC ¶¶ 17–19.)

25 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that (1) a right
26 secured by the Constitution or laws of the United States was violated; and (2) the
27 alleged violation was committed by a person acting under color of state law. *West v.*
28 *Atkins*, 487 U.S. 42, 48 (1988).

1 1. *Violation of Constitutional right*

2 The Fourth Amendment guarantees a person the right to be free from
3 unreasonable seizures. *See Graham v. Connor*, 490 U.S. 386, 394 (1989). An
4 unjustified arrest or seizure—one unsupported by probable cause—is per se
5 unreasonable. *United States v. Guzman-Padilla*, 573 F.3d 865, 876 (9th Cir. 2009);
6 *see also Morgan v. Woessner*, 997 F.2d 1244, 1252 (9th Cir. 1993) (explaining that
7 full-scale arrests, or seizures, must be supported by probable cause). The use of
8 excessive force by government actors in the context of an arrest violates a person's
9 Fourth Amendment right to be free from unreasonable seizures. *Guzman-Padilla*, 573
10 F.3d at 876. The right to be free from unreasonable seizures may also be violated by
11 malicious prosecution.³ *Awabdy v. City of Adelanto*, 368 F.3d 1062, 1069 (9th Cir.
12 2004).

13 Plaintiff avers he was illegally seized because he was merely sitting in a chair in
14 his friend's home—having done nothing illegal—when deputies burst in and arrested
15 him. (FAC ¶¶ 11–12.) As to excessive force, Plaintiff states he complied with the
16 deputies' orders and did not fight back or resist arrest, yet one of the deputies used a
17 can of pepper spray on him and proceeded to hit him in the head with the can, causing
18 a laceration to his forehead. (*Id.* ¶¶ 12–13.) Plaintiff also contends the deputies
19 booked him on false charges, incarcerating him for four days. (*Id.* ¶ 14.) Moreover,
20 he alleges that the deputies filed false police reports, leading to an eighteen-month
21 criminal proceeding against Plaintiff, which ultimately was dismissed. (*Id.* ¶ 15.)

22 Defendants contend that Plaintiff fails to state a claim because he (1) pleads no
23 facts showing personal involvement by five of the seven deputies; and (2) fails to
24 identify the two deputies who allegedly used excessive force against him. (Opp'n 9.)

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26 ³ Plaintiff alleges he suffered malicious prosecution in violation of his Fourth Amendment right
27 against unreasonable seizures *and* his Fourteenth Amendment right to due process of law. (FAC
28 ¶ 18.) No substantive due process right to be free from malicious prosecution exists under the
Fourteenth Amendment. *See Awabdy*, 368 F.3d at 1069.

1 As to Defendants' first contention, Plaintiff alleges that Roberts, Gonzales,
2 Stanley, Nance, Binder, Roth, and Abdulfatah each filed a false police report that was
3 subsequently used to criminally prosecute Plaintiff. (*Id.* ¶ 15.) Plaintiff also asserts
4 that all of the deputies acted maliciously. (*Id.* ¶ 22.) If all of the deputies indeed
5 knowingly filed false reports, intending to deprive Plaintiff of his Fourth Amendment
6 rights, then each may be liable under § 1983. See *Bretz v. Kelman*, 773 F.2d 1026,
7 1031 (9th Cir. 1985) (reversing the lower court's dismissal of a § 1983 claim alleging
8 that the prosecutor and officers conspired to convict plaintiff on groundless charges).
9 Moreover, Plaintiff alleges that all of the deputies unlawfully arrested and booked
10 Plaintiff on false charges. Therefore, Plaintiff pled facts sufficient to show that each
11 of the seven deputies was personally involved in violating Plaintiff's Fourth
12 Amendment rights.

13 As to Defendants' second contention, Plaintiff's failure to identify the two
14 arresting officers is not fatal. The purpose of Rule 8(a) is to give defendants fair
15 notice of what the claim is and the grounds supporting it. *Twombly*, 550 U.S. at 555.
16 Plaintiff alleges specifically that two of the deputies entered the room, ordered
17 Plaintiff to stand, assaulted him with pepper spray, and arrested him. (FAC ¶¶ 11–
18 12.) The only details Plaintiff omitted—something better known by Defendants than
19 by Plaintiff—are the names of the two deputies. Defendants' meritless argument
20 suggests that if a plaintiff did not know the name of the person who violated him, but
21 knew that someone from a small group of people that were present did, the detailed
22 allegation would nonetheless fail the Rule 8 pleading standard. Instead, the Court
23 finds that the FAC properly gives Defendants notice. Discovery will allow Plaintiff to
24 later identify who the two deputies were.

25 Construing all of Plaintiff's allegations as true, the Court finds that Plaintiff has
26 sufficiently pled that Defendants violated his Constitutional rights.

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1 2. *Color of law*

2 Acting under color of state law means that the person who allegedly violated
3 the plaintiff's rights executed such violation by exercising power conferred to that
4 person by state law. *West*, 487 U.S. at 49. Plaintiff asserts the Defendants were
5 employees of the County of Los Angeles and the Los Angeles County Sheriff's
6 Department, and that their violations of Plaintiff's Constitutional rights were done
7 under that authority. (*Id.* ¶ 3.) The Court finds this allegation sufficient under the
8 Rule 8 standard.

9 Thus, the Court finds that Plaintiff's first claim is sufficiently pled and
10 **DENIES** Defendant's motion to dismiss this claim.

11 **B. Second claim: *Monell* liability**

12 Plaintiff's second claim for *Monell* liability alleges that the County of Los
13 Angeles is liable under § 1983 because it "maintains and implements unlawful
14 policies, customs and habits of improper and inadequate hiring, training, retention,
15 discipline and supervision of its sheriff's deputies." (FAC ¶ 24.)

16 A local government cannot be sued under § 1983 for the actions of its
17 employees by way of respondeat superior. *AE v. Cnty. of Tulare*, 666 F.3d 631, 636
18 (9th Cir. 2012); *see also Monell v. Dep't of Soc. Servs. of N.Y.*, 436 U.S. 658, 690–91
19 (1978). However, a local government can be sued under § 1983 where that
20 government's "policy or custom" gives rise to the injury. *Id.* A plaintiff must prove
21 that the local government's deliberate conduct was the "moving force" behind the
22 injury alleged. *Bd. of the Cnty. Comm'rs v. Brown*, 520 U.S. 397, 404 (1997). That
23 is, the municipal action must have been taken with the requisite degree of culpability
24 and with a direct causal link to the deprivation of the federal right. *See id.*

25 Plaintiff references no facts to support his bare assertion. Plaintiff merely states
26 conclusions and speculates that the deputies' conduct was a result of the County's acts
27 or omissions. (FAC ¶¶ 24–25.)

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1 In the past, Ninth Circuit precedent may have directed this Court to deny
 2 dismissal of Plaintiff's bare assertions. *See Whitaker v. Garcetti*, 486 F.3d 572, 581
 3 (9th Cir. 2007) (stating that it is improper to dismiss a *Monell* claim even if it is based
 4 on nothing more than a bare allegation that the individual officers' conduct conformed
 5 to official policy, custom, or practice); *see also Shah v. Cnty. of L.A.*, 797 F.2d 743,
 6 747 (9th Cir. 1986) (same). But today, Plaintiff's second claim is insufficient when
 7 viewed in light of the Rule 8(a) standard as clarified by *Iqbal*. *Iqbal*, 556 U.S. at 678.
 8 The court in *AE* unequivocally held that *Monell* claims are to be judged by the same
 9 pleading standard as any other claim. *AE*, 666 F.3d at 637.

10 Therefore, the Court finds that Plaintiff has failed to state a *Monell* claim
 11 against the County of Los Angeles. Plaintiff's second claim is **DISMISSED**
 12 **WITHOUT PREJUDICE**.

13 **C. Plaintiff's request for punitive damages**

14 Plaintiff requests punitive damages for the Defendants' unlawful acts.
 15 Defendants contend that Plaintiff's request is improper and should be stricken because
 16 it fails to allege facts giving rise to oppression, fraud, or malice.

17 Punitive damages may be awarded in a § 1983 claim if the defendant's conduct
 18 was malicious, wanton, or oppressive, or involves reckless or callous indifference to
 19 another's rights. *Smith v. Wade*, 461 U.S. 30, 56 (1983); *Dang v. Cross*, 422 F.3d
 20 800, 807 (9th Cir. 2005). Conduct is oppressive when it injures or violates one's
 21 rights with "unnecessary harshness or severity as by misuse or abuse of authority or
 22 power, or by taking advantage of some weakness or disability or the misfortunes of
 23 another person." *Dang*, 422 F.3d at 809.

24 Plaintiff alleges that he cooperated with the deputies' commands and did not
 25 resist arrest. (FAC ¶ 13.) Nevertheless, one of the deputies pepper-sprayed him and
 26 then used the can to strike him in the head. (*Id.* ¶ 12.) After handcuffing Plaintiff, the
 27 deputies dragged him out of the residence on his stomach. (*Id.* ¶ 13.) Additionally,
 28 the deputies booked Plaintiff in jail on false charges and subsequently filed false

1 police reports. (*Id.* ¶¶ 14–15.) These facts, if found true, could support a conclusion
 2 that the deputies misused their authority, acted with unnecessary harshness, or were
 3 recklessly indifferent to Plaintiff’s rights. *Radcliffe v. Rainbow Constr. Co.*, 254 F.3d
 4 772, 787 (9th Cir. 2001) (“False arrest, false imprisonment, and malicious prosecution
 5 may cause substantial damages, and even lead to punitive damages.”); *see also*
 6 *Abudiab v. City of S.F.*, No. CV 09-01778 MHP 2011 U.S. Dist. LEXIS 65015 (N.D.
 7 Cal. June 20, 2011) (denying defendant’s motion for summary judgment on the issue
 8 of punitive damages where a city employee engaged in a shouting match with
 9 plaintiff, sprayed him with pepper spray, and punched him once in the back of the
 10 head).

11 Accordingly, the Court **DENIES** Defendants’ motion with respect to punitive
 12 damages.

13 IV. CONCLUSION

14 For the reasons discussed above, Defendants’ motion is **DENIED** with respect
 15 to Plaintiff’s first claim and punitive damages. Plaintiff’s second claim for *Monell*
 16 liability is **DISMISSED WITH LEAVE TO AMEND**. If so desired, Plaintiff may
 17 file an amended complaint by April 23, 2012 solely to correct the deficiencies in the
 18 *Monell* claim.

19
 20 **IT IS SO ORDERED.**

21
 22 April 9, 2012

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 25 _____
 26 HON. OTIS D. WRIGHT, II
 27 UNITED STATES DISTRICT JUDGE
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